APPENDIX A

CONSTITUTIONAL PROVISIONS INVOLVED

Article 4, Section 3, Clause 2: The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States: * * *.

Amendment V: * * * nor shall any person * * * be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATUTES INVOLVED

1. The Taylor Grazing Act

AN ACT

To stop injury to the public grazing lands by preventing over-grazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes. Approved June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), July 14, 1939 (53 Stat. 1002), July 30, 1947 (61 Stat. 630), August 6, 1947 (61 Stat. 790), June 19, 1948 (62 Stat. 533), and May 28, 1954 (68 Stat. 151).

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That in order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and or to modify the boundaries thereof of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not

in national forests, national parks and monuments, Indian reservations, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops: PROVIDED, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this Act shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this Act, nor to affect any land heretofore or hereafter surveyed which, except for the provisions of this Act, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this Act, the Secretary shall grant to owners of land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock-driving purposes as may be necessary for the convenient access by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stockgrazing rights. Neither this Act nor the Act of December 29, 1916 (39 Stat. 862; U.S.C., title 43, secs. 291 and following), commonly known as the "stock Raising Homestead Act," shall be construed as limiting the authority or policy of Congress or the President to include in national forests public lands of the character described in section 24 of the Act of March 3, 1891 (26 Stat. 1103; U.S.C., title 16, sec. 471), as amended, for the purposes set forth in the Act of June 4, 1897 (30 Stat. 35; U.S.C., title 16, sec. 475), or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held

in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: PROVIDED, HOWEVER, That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing districts from all forms of entry or settlement. Nothing in this Act shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district. (43 U.S.C., sec. 315)

SEC. 2. The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of the foregoing section, and he shall make such rules and regulations and establish such service, enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this Act and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range; and the Secretary of the Interior is authorized to continue the study of erosion and flood control and to perform such work as may be necessary, alone or in cooperation with other agencies, public or private, to protect and rehabilitate the areas subject to the provisions of this Act, through such funds as may be made available for that purpose, and any willful violation of the provisions of this Act or of such rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500. (43 U.S.C., sec. 315a)

SEC. 3. The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time, and in fixing the amount of such fees the Secretary of the Interior shall take into account the extent to which such districts yield public benefits over and above those accruing to the users of the forage resources for livestock purposes. Such fees shall consist of a grazing fee for the use of the range, and a range-improvement fee which, when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvement. Grazing permits shall be issued only to citizens of the United States or to those who have filed the necessary declarations of intention to become such, as required by the naturalization laws, and to groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant, or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except that no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten

years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use. During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit, the Secretary of the Interior is authorized, in his discretion, to remit, reduce, refund in whole or in part, to authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists: PROVIDED FURTHER, That nothing in this Act shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law. So far as consistent with the purposes and provisions of this Act, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands. (43 U.S.C., sec. 315b.)"

"SEC. 4. Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules

and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive. (43 U.S.C., sec. 315e)

SEC. 5. The Secretary of the Interior shall permit, under regulations to be prescribed by him, the free grazing within such districts of livestock kept for domestic purposes; and provided that so far as authorized by existing law or laws hereinafter enacted, nothing herein contained shall prevent the use of timber, stone, gravel, clay, coal, and other deposits by miners, prospectors for mineral, bona fide settlers and residents, for firewood, fencing, buildings, mining, prospecting, and domestic purposes within areas subject to the provisions of this Act. (43 U.S.C., sec. 315d)

SEC. 6. Nothing herein contained shall restrict the acquisition, granting, or use of permits or rights-of-way within grazing districts under existing law; or ingress or egress over the public lands in such districts for all proper and lawful purposes; and nothing herein contained shall restrict prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources of such districts under law applicable thereto. (43 U.S.C., sec. 315e)

SEC. 7. The Secretary of the Interior is hereby authorized in his discretion, to examine and classify any lands, withdrawn or reserved by Executive order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lieu, exchange or script rights or land grant, and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable public-land laws, except that

homestead entries shall not be allowed for tracts exceeding three hundred and twenty acres in area. Such lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry: PROVIDED, That locations and entries under the mining laws, including the Act of February 25, 1920, as amended, may be made upon such withdrawn and reserved areas without regard to classification and without restrictions or limitation by any provision of this Act. Where such lands are located within grazing districts reasonable notice shall be given by the Secretary of the Interior to any grazing permittee of such lands. The applicant, after his entry, selection, or location is allowed, shall be entitled to the possession and use of such lands: PROVIDED, That upon the application of any applicant qualified to make entry, selection, or location, under the public-land laws, filed in the land office of the proper district, the Secretary of the Interior shall cause any tract to be classified, and such application, if allowed by the Secretary of the Interior, shall entitle the applicant to a preference right to enter, select, or locate such lands if opened to entry as herein provided. (43 U.S.C., sec. 315f)

SEC. 8. (a) Where such action will promote the purposes of a district or facilitate the administration of the public lands, the Secretary is authorized to accept on behalf of the United States any lands within or without the exterior boundaries of a grazing district as a gift.

(b) When public interest will be benefited thereby the Secretary is authorized to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district, and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands.

(c) Upon application of any State to exchange lands within or without the boundaries of a grazing district the Secretary of the Interior shall, and is hereby, directed to proceed with such exchange at the earliest practicable date and to cooperate fully with the State to that end, but no State shall be permitted to select lieu lands in another State. The Secretary of the Interior shall accept on behalf of the United States title to any State-owned lands within or without the boundaries of a grazing district, and in exchange therefor issue patent to surveyed grazing district land not otherwise reserved or appropriated or unappropriated and unreserved surveyed public land; and in making such exchange the Secretary is authorized to patent to such State, land either of equal value or of equal acreage: PROVIDED, That no State shall select public lands in a grazing district in furtherance of any exchange unless the lands offered by the State in such exchange lie within such grazing district and the selected lands lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining land in such district for grazing purposes as set forth in this Act.

When an exchange is based on lands of equal acreage and the selected lands are mineral in character, the patent thereto shall contain a reservation of all minerals to the United States; and in making exchanges of equal acreage the Secretary of the Interior is authorized to accept title to offered lands which are mineral in character, with a mineral reservation to the State.

For the purpose of effecting exchanges based on lands of equal acreage the identification and area of unsurveyed school sections may be determined by protraction or otherwise. The selection by the State of lands in lieu of any such protracted school sections shall be a waiver of all of its right to such sections.

(d) Before any such exchange under this section shall be effected, notice of the contemplated exchange, describing

the lands involved, shall be published by the Secretary of the Interior once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in the same manner in some like newspaper published in any county in which may be situated any lands to be given in such exchange; lands conveyed to the United States under this Act shall, upon acceptance of title, become public lands, and if located within the exterior boundaries of a grazing district they shall become a part of the district within the boundaries of which they are located: Provided, That either party to an exchange based upon equal value under this section may make reservations of minerals, easements, or rights of use. Where reservations are made in lands conveyed either to or by the United States the right to enjoy them shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary. Where mineral reservations are made by the grantor in lands conveyed by the United States, it shall be so stipulated in the patent, and any person who prospects for or acquires the right to mine and remove the reserved mineral deposits may enter and occupy so much of the surface as may be required for all purposes incident to the prospecting for, mining and removal of the minerals therefrom, and may mine and remove such minerals, upon payment to the owner of the surface for damages caused to the land and improvements thereon. No fee shall be charged for any exchange of land made under this Act except one half of the cost of publishing notice of a proposed exchange as herein provided. (43 U.S.C., sec. 315g)

SEC. 9. The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts. The Secretary of the Interior shall provide by appropriate

rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge in a manner similar to the procedure in the land department. The Secretary of the Interior shall also be empowered to accept contributions toward the administration, protection, and improvement of lands within or without the exterior boundaries of a grazing district, moneys so received to be covered into the Treasury as a special fund, which is hereby appropriated and made available until expended, as the Secretary of the Interior may direct, for payment of expenses incident to said administration, protection, and improvement, and for refunds to depositors of amounts contributed by them in excess of their share of the cost. (43 U.S.C., sec. 315h)

SEC. 10. Except as provided in sections 9 and 11 hereof, all moneys received under the authority of this Act shall be deposited in the Treasury of the United States as miscellaneous receipts, but the following proportions of the moneys so received shall be distributed as follows: (a) 12½ per centum of the moneys collected as grazing fees under section 3 of this Act during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the grazing districts producing such moneys are situated, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the grazing districts producing such moneys are situated: PROVIDED, That if any grazing district is in more than one State or county, the distributive share to each from the proceeds of said district shall be proportional to its area in said district; (b) 25 per centum of all moneys collected under section 15 of this Act during any fiscal year when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvements; and 50 per centum of all moneys collected under section 15 of this Act during any fiscal year shall be paid at the end thereof by the Secretary of the

Treasury to the State in which the lands producing such moneys are located, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the lands producing such moneys are located: PROVIDED, That if any leased tract is in more than one State or county, the distributive share to each from the proceeds of said leased tract shall be proportional to its area in said leased tract. (43 U.S.C., sec. 315i)

SEC. 11. That when appropriated by Congress, 33⅓ per centum of all grazing fees received from each grazing district on Indian lands ceded to the United States for disposition under the public-land laws during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which said lands are situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county or counties in which such grazing lands are situated. And the remaining 66⅔ per centum of all grazing fees received from such grazing lands shall be deposited to the credit of the Indians pending final disposition under applicable laws, treaties, or agreements. The applicable public-land laws as to said Indian ceded lands within a district created under this Act shall continue in operation, except that each and every application for nonmineral title to said lands in a district created under this Act shall be allowed only if in the opinion of the Secretary of the Interior the land is of the character suited to disposal through the Act under which application is made and such entry and disposal will not affect adversely the best public interest, but no settlement or occupation of such lands shall be permitted until ninety days after allowance of an application. (43 U.S.C., sec. 315j)

SEC. 12. That the Secretary of the Interior is hereby authorized to cooperate with any department of the Government in carrying out the purposes of this Act, and in the coordination of range administration, particularly

where the same stock graze part time in a grazing district, and part time in a national forest or other reservation. (43 U.S.C., sec. 315k)

SEC. 13. That the President of the United States is authorized to reserve by proclamation and place under national-forest administration in any State where national forests may be created or enlarged by Executive order any unappropriated public lands lying within watersheds forming a part of the national forests which, in his opinion, can best be administered in connection with existing national-forest administration units, and to place under the Interior Department administration any lands within national forests, principally valuable for grazing, which, in his opinion, can best be administered under the provisions of this Act: PROVIDED, That such reservations or transfers shall not interfere with legal rights, acquired under any public-land laws so long as such rights are legally maintained. Lands placed under the national-forest administration under the authority of this Act shall be subject to all the laws and regulations relating to national forests, and lands placed under the Interior Department administration shall be subject to all public-land laws and regulations applicable to grazing districts created under authority of this Act. Nothing in this section shall be construed so as to limit the powers of the President (relating to reorganizations in the Executive departments) granted by title 4 of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933. (43 U.S.C., sec. 315l).

SEC. 14. That section 2455 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 2455. Notwithstanding the provisions of section 2357 of the Revised Statutes (U.S.C., title 43, sec. 678) and of the Act of August 30, 1890 (26 Stat.

391), it shall be lawful for the Secretary of the Interior to order into market and sell at public auction, at the land office of the district in which the land is situated for not less than the appraised value, any isolated or disconnected tract or parcel of the public domain not exceeding one thousand five hundred and twenty acres which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land office of the district in which such land may be situated: PROVIDED, That for a period of not less than thirty days after the highest bid has been received any owner or owners of contiguous land shall have a preference right to buy the offered land at such highest bid price, and where two or more persons apply to exercise such preference right the Secretary of the Interior is authorized to make an equitable division of the land among such applicants, but in no case shall the adjacent land owner or owners be required to pay more than three times the appraised price: PROVIDED FURTHER, That any legal subdivisions of the public land, not exceeding seven hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section: PROVIDED FURTHER, That this section shall not defeat any valid right which has already attached under any pending entry or location. The word 'person' in this section shall be deemed to include corporations, partnerships, and associations." (43 U.S.C., sec. 1171)

SEC. 15. The Secretary of the Interior is further authorized, in his discretion, where vacant, unappropriated, and unreserved lands of the public domain are so situated

as not to justify their inclusion in any grazing district to be established pursuant to this Act, to lease any such lands for grazing purposes, upon such terms and conditions as the Secretary may prescribe: Provided, That preference shall be given to owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit proper use of such contiguous lands, except that when such isolated or disconnected tracts embrace seven hundred and sixty acres or less, the owners, homesteaders, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, during a period of ninety days after such tract is offered for lease, upon the terms and conditions prescribed by the Secretary: Provided Further, That when public lands are restored from a withdrawal, the Secretary may grant an appropriate preference right for a grazing lease, license, or permit to users of the land for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to the time of their restoration. (43 U.S.C., sec. 315m)

Sec. 16. Nothing in this Act shall be construed as restricting the respective States from enforcing any and all statutes enacted for police regulation, nor shall the police power of the respective States be, by this Act, impaired or restricted, and all laws heretofore enacted by the respective States or any thereof, or that may hereafter be enacted as regards public health or public welfare, shall at all times be in full force and effect: Provided, However, That nothing in this section shall be construed as limiting or restricting the power and authority of the United States. (43 U.S.C., sec. 315n)

Sec. 17. Superseded by 1946 Reorganization Plan No. 3, sec. 403, effective July 16, 1946 (11 F.R. 7876, 60 Stat. 1100). (43 U.S.C., sec. 315o)

Sec. 18. (a) In order that the Secretary of the Interior may have the benefit of the fullest information and advice

concerning physical, economic, and other local conditions in the several grazing districts, there shall be an advisory board of local stockmen in each such district, the members of which shall be known as grazing district advisers. Each such board shall consist of not less than five nor more than twelve members, exclusive of wildlife representatives, one such representative to be appointed by the Secretary, in his discretion, to membership on each such board. Except for such wildlife representatives, the names of the members of each district advisory board shall be recommended to the Secretary by the users of the range in that district through an election conducted under rules and regulations prescribed by the Secretary. No grazing district adviser so recommended, however, shall assume office until he has been appointed by the Secretary and has taken an oath of office. The Secretary may, after due notice, remove any grazing district adviser from office if in his opinion such removal would be for the good of the service.

(b) Each district advisory board shall meet at least once annually at a time to be fixed by the Secretary of the Interior, or by such other officer to whom the Secretary may delegate the function of issuing grazing permits, and at such other times as its members may be called by such officer. Each board shall offer advice and make a recommendation on each application for such a grazing permit within its district: PROVIDED, That in no case shall any grazing district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested. Each board shall further offer advice or make recommendations concerning rules and regulations for the administration of this Act, the establishment of grazing districts and the modification of the boundaries thereof the seasons of use and carrying capacity of the range, and any other matters affecting the administration of this Act within the district. Except in a case where in the judgment of the Secretary an emergency shall exist, the Secretary shall request the

advice of the advisory board in advance of the promulgation of any rules and regulations affecting the district. (43 U.S.C., sec. 315o-1)

2. Section 8 of the Taylor Grazing Act, as Originally Enacted (Act of June 28, 1934, c. 865, 48 Stat. 1269, 1272-73)

SEC. 8. That where such action will promote the purposes of the district or facilitate its administration, the Secretary is authorized and directed to accept on behalf of the United States any lands within the exterior boundaries of a district as a gift, or when public interests will be benefited thereby, he is authorized and directed to accept on behalf of the United States title to any privately owned lands within the exterior boundaries of said grazing district, and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands: *Provided*, That before any such exchange shall be effected, notice of the contemplated exchange, describing the lands involved, shall be published by the Secretary of the Interior once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in the same manner in some like newspaper published in any county in which may be situated any lands to be given in such exchange; lands conveyed to the United States under this Act, shall, upon acceptance of title, become public lands and parts of the grazing district within whose exterior boundaries they are located: *Provided further*, That either party to an exchange may make reservations of minerals, easements, or rights of use, the values of which shall be duly considered in determining the values of the exchanged lands. Where reservations are made in lands conveyed to the United States, the right to enjoy them shall be subject to such reasonable conditions

respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the Secretary of the Interior. Where mineral reservations are made in lands conveyed by the United States, it shall be so stipulated in the patent, and any person who acquires the right to mine and remove the reserved mineral deposits may enter and occupy so much of the surface as may be required for all purposes incident to the mining and removal of the minerals therefrom and may mine and remove such minerals, upon payment to the owner of the surface for damages caused to the land and improvements thereon. Upon application of any State to exchange lands within or without the boundary of a grazing district the Secretary of the Interior is authorized and directed, in the manner provided for the exchange of privately owned lands in this section, to proceed with such exchange at the earliest practicable date and to cooperate fully with the State to that end; but no State shall be permitted to select first lands in another State.

3. Act of March 3, 1891, c. 561, § 9, 26 Stat. 1099, 43 U.S.C. 671

No public lands of the United States, except abandoned military or other reservations* isolated and disconnected fractional tracts authorized to be sold by section 1171, and mineral and other lands the sale of which at public auction has been authorized by Acts of Congress of a special nature having local application, shall be sold at public sale.

4. Act of June 1, 1938, c. 317, § 1, 52 Stat. 609, as amended, 43 U.S.C. 682a, "Small Tracts Act"

The Secretary of the Interior, in his discretion, is authorized to sell or lease to any person or organization described in section 682c of this title a tract of not exceeding five acres of any vacant, unreserved public lands, public lands

* A comma should be inserted following the word "reservations."

withdrawn by Executive Orders Numbered 6910 of November 26, 1934, and 6964 of February 5, 1935, for classification, or public lands withdrawn or reserved by the Secretary of the Interior for any purposes, which the Secretary may classify as chiefly valuable for residence, recreation, business, or community site purposes, if he finds that such sale or lease of the lands would not unreasonably interfere with the use of water for grazing purposes nor unduly impair the protection of watershed areas, in reasonably compact form and under such rules and regulations as he may prescribe, at a price to be determined by him, for such use: Provided, That no land may be sold hereunder unless it has been surveyed. No person or organization shall be permitted to purchase or lease more than one tract under the provisions of sections 682a-682c of this title, except upon a showing of good faith and reasons satisfactory to the Secretary.

5. Act July 9, 1942 (56 Stat. 654) as amended May 28, 1948, 62 Stat. 277, 43 U.S.C. 315q

That whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding grazing permits or licenses and persons whose grazing permits or licenses have been or will be cancelled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing herein contained shall be construed to create any liability not now existing against the United States.

6. Pub. L. 85-337, § 2, 72 Stat. 28, February 28, 1958, 43 U.S.C. 156

No public land, water, or land and water area shall, except by Act of Congress, on and after February 28, 1958, be (1) withdrawn from settlement, location, sale or entry for the use of the Department of Defense for defense purposes; (2) reserved for such use; or (3) restricted from operation of the mineral leasing provisions of the Outer Continental Shelf Lands Act, if such withdrawal, reservation, or restriction would result in the withdrawal, reservation, or restriction of more than five thousand acres in the aggregate for any one defense project or facility of the Department of Defense since the date of enactment of this Act or since the last previous Act of Congress which withdrew, reserved, or restricted public land, waters or land and water area for that project or facility, whichever is later.

APPENDIX B

Opinions and Judgment Below

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,711

W. DALTON LARUE, SR., et al., APPELLANTS

v.

STEWART L. UDALL, individually and as Secretary of the Interior,

and

NORTH AMERICAN AVIATION, INC., APPELLEES

Appeal from the United States District Court for the District of Columbia

Decided October 3, 1963

Mr. David Ginsburg, with whom *Mr. Leonard N. Bebchick* was on the brief, for appellant.

Mr. Edmund B. Clark, Attorney, Department of Justice, with whom *Assistant Attorney General Clark*, *Messrs. Roger P. Marquis* and *Thomas L. McKevitt*, Attorneys, Department of Justice, were on the brief, for appellee Udall.

Mr. Charles Pickett, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Mr. Warren E. Baker* was on the brief, for appellee North American Aviation, Inc. *Mr. Joseph F. Healy, Jr.*,

also entered an appearance for appellee North American Aviation, Inc.

Before BAZELON, *Chief Judge*, and WILBUR K. MILLER and BURGER, *Circuit Judges*.

WILBUR K. MILLER, *Circuit Judge*: The appellants operate a cattle ranch located within the boundaries of Carson City Grazing District No. 3, Nevada. They own in fee about 1,600 acres in five non-contiguous tracts, and are licensed to graze their cattle on approximately 10,000 acres of public land. Due to the railroad grants of the Nineteenth Century, the area is made up of both publicly and privately owned tracts in a checkerboard pattern.

Appellee North American Aviation, Inc., is a large corporation engaged in the development and manufacture of rocket engines and rocket power plants and in research in that field. Having progressed to the point where it needed a very large body of land in an isolated area for the development of its program, North American acquired title to a considerable portion of the privately owned lands in the portion of Carson City Grazing District No. 3 heretofore utilized by the appellants. In order to complete its project, North American needed to acquire the large acreage of public lands under grazing license to the appellants.

In exchange for this portion of Carson City Grazing District No. 3, which has an appraised value of $86,400, North American offered the United States more than 20,000 acres lying within the boundaries of Winnemucca Grazing District No. 2, Nevada, which has an appraised value of $90,100. This land is a substantial distance from the land North American desired to obtain.

The appellants protested that the exclusion of their cattle from the area sought by North American would seriously curtail, if not destroy, their ranching operation, as the lands owned by them in fee will not sustain it; and they

asserted that § 8(b) of the Taylor Grazing Act[1] which authorizes the Secretary of the Interior in some circumstances to make such exchanges does not authorize the exchange proposed by North American. Arguments pro and con on appellants' protest, including affidavits and memoranda of law, were considered by the lower echelons of the Department and finally the matter reached the Secretary of the Interior. In a somewhat lengthy opinion, in which he discussed the matter in detail, the Secretary approved the exchange.

Thereupon, the appellants complained to the United States District Court for the District of Columbia, challenging the legality of the exchange so approved. The District Court having affirmed the Secretary's decision, the appellants brought this appeal.

They contend that § 8(b) of the Taylor Grazing Act does not authorize the Secretary of the Interior to issue a patent for public grazing land to a private organization for industrial use, even for national defense purposes, especially when his act in so doing will terminate a grazing license and destroy a ranching operation. Their principal argument is that § 8(b) authorizes the exchange of publicly owned grazing lands for privately owned lands only when the public interests in grazing on the public range and in conservation will be benefited thereby.[2] That North

[1] That section, which is 43 U. S. C. §315g(b), is as follows:

"(b) When public interests will be benefited thereby the Secretary is authorized to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district, and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands."

[2] Appellants point out that a former Solicitor of the Department of the Interior took this view of the section and that, in this case, the Associate Director of the Bureau of Land Management so interpreted it.

American will not use the lands for grazing or conservation purposes is not disputed.

The term "public interests" in § 8(b) is not defined by that section, nor is it limited or restricted in any way. If Congress had intended to restrict the meaning of those words in the manner urged by the appellants, we think it would have said so. Such a qualification could easily have been inserted in the statute. It seems to us that the Secretary correctly construed § 8(b) when he said in his opinion:

> " . . . [T]he benefit to the public interests, which is the criterion of the statute, need not be related exclusively to conservation of Federal grazing resources nor need it be shown that a proposed exchange will promote range management. . . . [T]he Taylor Grazing Act is a multiple purpose act and while its chief immediate purpose was to stop injury to the public domain by unregulated grazing and to promote the stabilization of the livestock industry, section 1 of the act authorizes the Secretary of the Interior to establish grazing districts in order to promote the highest use of the public domain 'pending its final disposal.' Section 3 authorizes the Secretary to issue permits to graze livestock on such grazing districts but provides that the issuance of such permits shall not create any right, title, interest, or estate in or to the lands. Section 7, as amended by the act of June 26, 1936, authorizes the Secretary to examine and classify lands within grazing districts and to open such of those lands as he finds to be more valuable or suitable for other purposes than grazing or proper for acquisition in satisfaction of outstanding rights to disposition under applicable public land laws, after reasonable notice has been given to grazing permittees. Section 14 of the act (43 U. S. C., 1958 ed., sec. 1171) authorizes the Secretary to order into market and sell at public auction isolated or disconnected tracts of the public domain and tracts which are mountainous and too rough for cultivation.

"Thus nothing in the other sections of the act suggest that private interests may not acquire public land being used for grazing purposes to the detriment of those licensed to use the land."

We observe, moreover, that § 8(b) expressly authorizes the Secretary to exchange surveyed public land for privately owned land outside a grazing district. It is also true, as the Secretary's opinion pointed out, that North American's acquisition of large acreage of privately owned land in the area of the selected land has reduced the importance of grazing in the area.

Even under appellants' restricted view of the meaning of the statutory words "public interests," it is clearly the Secretary's duty, in considering a proposed exchange, to consider its net result: to compare the advantages which the offered land would bring to conservation and the grazing industry with any disadvantage to those interests which might result to them from the withdrawal of the selected lands from a grazing district. This the Secretary seems to have done, as he held "that acquisition of the offered lands would block out holdings of public lands and would facilitate the administration and management of the area for grazing purposes." Thus appellee Udall gave another reason for approving the exchange in addition to his interpretation of § 8(b). We think he was right in both respects.

Appellants also assert that their grazing unit has been and is pledged as security for *bona fide* loans, and that therefore the Secretary may not terminate their grazing permit. As a basis for the assertion they rely upon the language we have italicized in the following portion of § 3 of the Taylor Grazing Act (43 U. S. C. § 315b):

" . . . Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water

rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant, or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except that *no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. . . .*"

Their contention is that if the Secretary may not refuse to renew a permit when the permittee's grazing unit is pledged as security for a *bona fide* loan, "he can hardly bring about the same result indirectly, by terminating a permit prior to the expiration of the term . . . ." As the context shows, the provision relied upon by the appellants is one of the factors to be considered by the Secretary in establishing preferences between conflicting applications for permits on the federal range. By no means should it be construed as providing that, by maintaining a lien on his grazing unit, a permittee may also create and maintain a vested interest therein which will prevent the United States from exchanging it under § 8(b).

Another point on appeal is thus stated by the appellants:

> "Appellee Udall acted unlawfully and deprived appellants of due process (a) by denying a full and fair hearing in derogation both of the provisions of the Taylor Grazing Act and the Fifth Amendment; (b) by denying access to the full record on which appellee Udall's decision was based; and (c) by denying appellants the protection afforded by the Administrative Procedure Act."

As appellants were heard at length on their protest against the proposed exchange, it is apparent their real complaint is that no formal evidentiary hearing was held. We find nothing in the Taylor Grazing Act which requires a hearing on such a protest. Section 8, dealing with exchanges, merely requires publication of notice of a contemplated exchange. Where Congress intended a hearing to be held, it provided therefor in express terms, as it did in § 1 of the Taylor Grazing Act (43 U. S. C. § 315):

> " . . . Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held . . . ."

Section 9 of the Act (43 U. S. C. § 315h) does provide for "local hearings on appeals from the decisions of the administrative officer in charge in a manner similar to the procedure in the land department." We think the provision does not apply to applications for exchange under § 8(b), a matter in which no local administrative officer is "in charge," but only to matters that arise in the administration of grazing districts.

Appellants' reliance on the Fifth Amendment disregards the provision of § 3 of the Act (43 U. S. C. § 315b) that

> " . . . So far as consistent with the purposes and provisions of this chapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this chapter shall not create any right, title, interest, or estate in or to the lands."

The command of Congress that grazing privileges shall be adequately safeguarded "so far as consistent with the purposes and provisions of this chapter" does not mean that a grazing permit is to prevent the Government's exercise of the right of exchange, which is "one of the provisions of this chapter."

The Administrative Procedure Act does not require a hearing here, as § 5 of that measure (5 U. S. C. § 1004) applies only to agency action which the agency statute provides must be preceded by a hearing. *Springfield Airport Authority* v. *C. A. B.*, 109 U. S. App. D. C. 197, 198 n. 1, 285 F. (2d) 277, 278 n. 1 (1960).

We have carefully considered all the other contentions made by the appellants, but do not find in them any reason for disturbing the Secretary's decision. As we said in *Safarik* v. *Udall*:[3]

> "It is obvious that the Secretary of the Interior in carrying out his functions in the administration and management of the public lands, must be accorded a wide area of discretion and it is a well-recognized rule that administrative action taken by him will not be disturbed by a court unless it is clearly wrong."

Instead of being clearly wrong, the Secretary's action seems to us to have been quite correct. The District Court's judgment upholding his decision will be affirmed.

It is so ordered.

BAZELON, *Circuit Judge*, concurring: Under § 8(b) of the Taylor Grazing Act, 43 U.S.C. § 315g(b) (1958), any landowner may propose to exchange his land ["offered" lands]

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[3] 113 U. S. App. D. C. 68, 74, 304 F. (2d) 944, 950, *cert. denied sub nom.* Hansen v. Udall, 371 U. S. 901 (1962).

for federal land of equal value located within a grazing district ["selected" lands]; and the Secretary of the Interior may approve the exchange if "public interests will be benefited thereby." In this case, because the Secretary viewed the Taylor Act as a "multiple purpose" statute, he construed the term "public interests" as a broad reference to the general public interest, rather than being limited to grazing interests. In approving the exchange, the Secretary relied heavily on his finding that the exchange would benefit the general public interest, but he also found that the exchange would benefit grazing interests.[1] This court holds that the exchange may be approved on either ground. I think approval can rest only on a finding of benefit to grazing interests.

The Taylor Grazing Act of 1934[2] closed the public domain, climaxing the reversal of earlier policy which had encouraged disposal of the public lands to private ownership.[3] The policy of land conservation—retaining federal ownership and regulating land use to prevent depletion of natural resources—began with the creation of forest reserves after 1891.[4] The Taylor Act extended this policy to

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[1] The Secretary's finding of grazing benefit appears from his statements that the importance of grazing in the area of the selected lands has lessened in recent years, and that "acquisition of the offered lands would block out holdings of public lands and would facilitate the administration and management of the area for grazing purposes." *W. Dalton LaRue, Sr.*, A-29309 (1962).

[2] Act of June 28, 1934, 48 Stat. 1269 (1934), as amended, 43 U.S.C. §§ 315, 315a-315r (1958).

[3] See, *e.g.*, *Hearings on H.R. 6462 Before the Senate Committee on Public Lands and Surveys*, 73d Cong., 2d Sess. 46 (1934) (statement by Senator O'Mahoney of Wyoming). See ROBBINS, OUR LANDED HERITAGE 285-423, especially 421-23 (1950); PEFFER, THE CLOSING OF THE PUBLIC DOMAIN 5, 8-231, 302-41 (1951); CLAWSON & HELD, THE FEDERAL LANDS 15-36 (1957) (Marion Clawson was Director of the Bureau of Land Management in 1948-53).

[4] 26 Stat. 1103 (1891), as amended, 16 U.S.C. § 471 (1958).

the remaining 173,000,000 acres of public lands still unreserved by 1934. To prevent soil deterioration and stabilize the livestock industry which constituted the chief user of this public range,[5] the Secretary of the Interior was authorized to reserve suitable lands for the creation of grazing districts and to regulate grazing within the districts by issuing permits.[6] It was recognized however, that the existing checkerboard pattern of alternating public and private ownership, resulting from the course of land settlement during the nineteenth century,[7] would make it difficult to administer the districts efficiently.[8] To meet this problem, § 8 of the Act was designed to foster consolidation in the manner of earlier forest reserves legislation:[9] the Secretary was authorized to accept land which would consoli-

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[5] See S. Rep. No. 1182, 73d Cong., 2d Sess. (1934); H.R. Rep. No. 903, 73d Cong., 2d Sess. (1934); 78 Cong. Rec. 6346, 6364-65 (1934). See also Ickes, *The National Domain and the New Deal*, Saturday Evening Post Dec. 23, 1933, p. 10.

[6] Section 1 of the Act originally limited the total amount of land which could be included in grazing districts to 80,000,000 acres. This limitation, inserted to curb the power of the Secretary, 78 Cong. Rec. 11140 (1934), was shortly abandoned in order to allow maximum application of the Taylor Act's policies. 49 Stat. 1976 (1936); 68 Stat. 151 (1954); see 80 Cong. Rec. 3815-16 (1936). Today there are 161,000,000 acres of federal land in 58 grazing districts. Bureau of Land Management, Public Land Statistics, Table 81 (1962).

[7] Behind the checkerboard pattern is the familiar history of free land entry, railroad land grants, and school land cessions to the States. See Hibbard, *Land Grants*, 9 Encyc. Soc. Sci. 32 (1937).

[8] H.R. Rep. No. 903, 73d Cong., 2d Sess. 3, 7 (1934). See Clawson & Held 48-50.

[9] 42 Stat. 465 (1922), 16 U.S.C. § 485 (1958); 43 Stat. 1215 (1925), 16 U.S.C. § 516 (1958). See also 16 U.S.C. §§ 486a-486w (1958).

date the grazing districts, either by gift or in exchange for other grazing land of equal value.[10]

The legislative history of the Act shows that in authorizing the Secretary to convey public lands to private individuals as part of an exchange, § 8(b) was intended not as a new source of power to alienate federal lands, but simply to promote consolidation of the grazing districts.[11] As such, I think that the determination that "public interests will be benefited [by an exchange]" includes only public interests in furtherance of the grazing and range stabilization policies which are the subject of the Act. The term was so construed in an opinion rendered by the Solicitor of the Department of the Interior shortly after the Act's passage,[12] and there is no basis for the Secretary's suggestion

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[10] Section 8, Act of June 28, 1934, 48 Stat. 1272, (1934), as amended, 43 U.S.C. § 315g (1958):

"(a) *Where such action will promote the purposes of a district or facilitate the administration of the public lands*, the Secretary is authorized to accept on behalf of the United States any land within or without the exterior boundaries of a grazing district as a gift.

"(b) *When public interests will be benefited thereby* the Secretary is authorized to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district, and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing district land: . . .

"(c) Upon application of any State to exchange lands within or without the boundaries of a grazing district the Secretary of the Interior shall, and is directed to proceed with such exchange at the earliest practicable date: . . . ." [Emphasis supplied.]

[11] See 78 CONG. REC. 6359 (1934); *Senate Hearings on H.R. 6462, supra* note 3, at 94-100. In the Hearings, Representative Taylor said:

"But I would like to say that under this bill it is not intended to make a general exchange arrangement outside, where they [the lands] have nothing to do with this bill." *Id.* at 98.

[12] *Land exchange with States under Taylor Grazing Act*, 55 I.D. 9 (1934).

that amendments since 1934 have changed the meaning of § 8.[13]

The Secretary argues that where Congress wished to consider only grazing interests, it said so. For this proposition, he cites § 8(a), dealing with the acceptance of gift lands, which requires the specific showing that the acquisition will "promote the purposes of a district or facilitate the administration of the public lands." But I do not think the more general language in § 8(b) was intended to allow the Secretary to go beyond grazing interests for his standards. Rather, it indicates that in an exchange of lands, there will be more than one factor to consider under the heading of grazing interests. Thus where the Government is conveying land as well as procuring land, it must consider the effect of the transaction not only on administration of the grazing district of the offered land, but also its effect on administration of the grazing district of the selected land and on the interests of grazing licensees of the land to be conveyed.[14] While offered land might meet the

[13] The only major change was a 1936 amendment eliminating an ambiguity in regard to State exchanges. 49 Stat. 1976 (1936); see *Hearings on S. 2359 Before the Senate Committee on Public Lands and Surveys*, 74th Cong., 1st Sess. 47-78 (1935). Sections 8(a) and 8(b) have been amended to permit the Secretary to accept land situated outside the boundaries of a grazing district. 49 Stat. 1976 (1936); 62 Stat. 533 (1948). But it appears that these amendments were for the limited purpose of acquiring land needed for stock driveways adjacent to grazing districts. *Cf.* S. Rep. No. 1497, 80th Cong., 2d Sess. (1948).

[14] Although § 3, 43 U.S.C. § 315b (1958), provides that issuance of a grazing permit shall not create any vested right, it also states that "so far as consistent with the purposes and provisions of this chapter, grazing privileges recognized and acknowledged shall be adequately safeguarded." See *Oman v. United States*, 179 F. 2d 738 (10th Cir. 1949); *Red Canyon Sheep Co. v. Ickes*, 69 App. D.C. 27, 98 F. 2d 308 (1938). Thus, while the existence of an outstanding permit does not preclude an exchange, it is a relevant consideration.

required standards, the detriment involved in giving up the selected lands might outweigh the benefit. In *Willis N. Farlow*, 62 I.D. 206 (1955), a proposed exchange of lands equally valuable for grazing was disapproved because of the detrimental effect on two ranchers.

This court agrees with the Secretary that private interests may acquire public grazing land to the detriment of grazing licensees.[15] I also agree. But that does not answer the question in this case. The question here is whether or not such an acquisition *under the exchange provisions of § 8(b)* requires a determination that the net effect of the exchange will benefit public grazing interests. I think this determination is required, and that the grazing value of the offered land is a critical consideration.[16]

A contrary conclusion would be inconsistent with the over-all congressional policy sharply limiting the Secretary's authority to remove land from public ownership.

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[15] Section 3 of the Act requires the Secretary to renew permits where the grazing unit covered is pledged as security for a bona fide loan. The purpose of this provision was to encourage bank credit, see *Hearings on S. 2359 Before the Senate Committee on Public Lands and Surveys*, 74th Cong., 1st Sess. 37-39 (1935); 78 CONG. REC. 11151-55, 11162 (1934), but there was no indication that it was intended to limit the Secretary's power to consolidate districts by land exchange.

[16] Appellees cite two exchanges approved by the Secretary under § 8(b) to show that offered lands need not be valuable for grazing. In *Elbert O. Jensen*, 60 I.D. 231 (1948), the exchange was approved, although the offered land was situated within a national forest, and not under the jurisdiction of the Taylor Act. But that case is distinguishable because similar land conservation policies underlie the creation and administration of the forest reserves and the grazing districts, and because grazing is one of the major issues of forest lands. See CLAWSON & HELD 57-60, 200. See also 76 Stat. 140 (1962), 43 U.S.C. § 315g-1 (Supp. IV 1959-1962); H.R. REP. No. 1418, 87th Cong., 2d Sess. (1962). In *Owen Ault*, A-27845, which was not appealed, the Secretary based his approval of a proposed exchange on national defense interests. I think he erred.

Since 1891, when general alienation of public land was forbidden, land sales have been permitted only by specific legislation.[17] Such legislation is presently limited to a handful of special-purpose statutes, none of which authorizes the sale of land in excess of 1520 acres in a single transaction.[18] The Secretary here claims a grant of authority under § 8(b) which greatly exceeds that under any other public land law.

The Taylor Act reflects Congress' determination to limit the Secretary's power.[19] This purpose was reconfirmed as recently as 1958 by the legislative reaction to administrative claims—based on national defense needs—to greater authority over the public lands. Following a report criticizing excessive land demands by the military departments,[20] Congress amended existing legislation authorizing reservation of land for military purposes[21] to require specific congressional authority for each reservation exceeding 5,000 acres.[22] The purpose of the amendment, as described in the Senate Committee Report, was:

> to return from the executive branch to the Congress—to the extent that [public] lands are involved—the responsibility imposed by the Constitution on the Congress for their management.[23]

Nevertheless, in the present case, appellees argue that the special importance of national defense justifies a broad

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[17] 26 Stat. 1099 (1891), 43 U.S.C. § 671 (1958).

[18] The major provisions are at 43 U.S.C. §§ 321-39, 351-60, 682a-682e, 1171-77 (1958). See summary in CLAWSON & HELD 391-92.

[19] See, *e.g.*, 78 CONG. REC. 11140-43 (1934).

[20] S. REP. No. 857, 85th Cong., 1st Sess. (1957). See also H.R. REP. No. 2856, 84th Cong., 2d Sess. (1956).

[21] 10 U.S.C. § 2667 (1958).

[22] 72 Stat. 27 (1958), 43 U.S.C. §§ 155-158 (1958).

[23] S. REP. No. 857, 85th Cong., 1st Sess. 3 (1957).

reading of § 8(b). But Congress has provided a method for making land—including grazing land—available for national defense. Under § 7 of the Taylor Act, land found "more valuable or suitable for any other use" than grazing may be reclassified and opened for "disposal in accordance with such classification under applicable public-land laws."[24] And 10 U.S.C. § 2667 (1958) authorizes a private lease "whenever the Secretary of a military department considers it advantageous to the United States." This procedure, although not as expeditious as a § 8(b) exchange,[25] is the one fixed by Congress for accommodating national defense interests.

The decrease in grazing since 1934,[26] together with the growing importance of Western commercial and industrial development, may indicate that the Taylor Act's emphasis on grazing is outdated. But Congress has not said so, nor has Congress relaxed its concern with land conservation and retention of federal ownership.[27] If changed circumstances require a view of "public interests" under § 8(b) that goes beyond grazing interests, Congress—not the Secretary—must say so.[28]

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[24] 43 U.S.C. § 315f (1958).

[25] Since the selected land in this case exceeds 5000 acres, specific congressional approval would be required. See note 22 *supra*. In addition, North American Aviation would not gain fee title to the land, and holders of grazing licenses would be entitled to compensation for the destruction of their licenses. 56 Stat. 654 (1942), as amended, 43 U.S.C. § 315q (1958).

[26] See CLAWSON & HELD 335.

[27] See INT. DEPT. ANN. REP. (1962): *New Horizons in Resource Conservation*, IX-LXXVI, especially XLVI-L. See also CLAWSON & HELD 346-47.

[28] Congress considered legislation on the subject in 1963. See S. 601, S. 1598, S. 1599, S. 1600, S. 1601, and S. 1602, 88th Cong., 1st Sess. (1963). See also SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, 88TH CONG., 1ST SESS., THE PUBLIC LANDS (Comm. Print 1963).

Judgment

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

It is further ORDERED by the Court that appellee North American Aviation, Inc., recover from appellants its taxable costs on this appeal, and have execution therefor.

Per Circuit Judge WILBUR K. MILLER

Dated: Oct. 3, 1963

Separate concurring opinion by Chief Judge Bazelon.